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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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# HOUSE BILL

## No. 1390

Session of  
1977

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INTRODUCED BY BROWN, WHITE, MILLER, RHODES, FISHER, GREENLEAF,  
HASKELL, SCIRICA, W. D. HUTCHINSON, OLIVER AND JOHNSON,  
JUNE 22, 1977

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REFERRED TO COMMITTEE ON JUDICIARY, JUNE 22, 1977

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AN ACT

1 Establishing an Office of Ombudsman for Corrections and the  
2 Corrections Ombudsman Committee.

3 The General Assembly of the Commonwealth of Pennsylvania  
4 hereby enacts as follows:

5 Section 1. Definitions.

6 The following words and phrases when used in this act shall  
7 have, unless the context clearly indicates otherwise, the  
8 meanings given to them in this section:

9 "Administrative agency" or "agency" means any division,  
10 official, or employee of the Bureau of Corrections, Department  
11 of Justice, the Pennsylvania Board of Probation and Parole and  
12 the Board of Pardons, but does not include:

13 (1) Any court or judge.

14 (2) Any member of the Senate or House of Representatives  
15 of the Commonwealth.

16 (3) The Governor or his personal staff.

17 (4) Any instrumentality of the Federal Government of the

1 United States.

2 (5) Any agency of or political subdivision of the  
3 Commonwealth.

4 (6) Any official or agency established under an  
5 interstate compact.

6 Section 2. Office of Ombudsman.

7 (a) The Office of the Ombudsman for Corrections is hereby  
8 created. The office shall have as its chief administrative  
9 officer the ombudsman who shall either personally, by deputy or  
10 duly authorized agent or employee of the office, and subject at  
11 all times to the provision of this act and the act of April 9,  
12 1929 (P.L.177, No.175), known as "The Administrative Code of  
13 1929." Exercise the powers and perform the duties by law vested  
14 in and imposed on the office.

15 (b) The ombudsman shall be appointed by, shall serve at the  
16 pleasure of, and shall be subject to the Corrections Ombudsman  
17 Committee. The Corrections Ombudsman Committee shall be composed  
18 of eight members, four of whom shall be members of the House of  
19 Representatives and shall be appointed by the Speaker, and four  
20 of whom shall be members of the Senate, who shall be appointed  
21 by the President pro tempore. No more than half the members  
22 appointed from each House of the General Assembly shall be from  
23 the same political party. The ombudsman shall have the authority  
24 to investigate decisions, acts and other matters of an agency so  
25 as to promote the highest attainable standards of competence,  
26 efficiency and justice in the administration of corrections.

27 (c) The ombudsman shall appoint such personnel as are  
28 required to administer the provisions of this act, and shall  
29 designate one of his assistants to be the deputy ombudsman. The  
30 ombudsman may delegate to members of his staff any of his

1 authority or duties except the duty of formally making  
2 recommendations to an administrative agency, or reports to the  
3 Office of the Governor, or to the Legislature.

4 Section 3. Powers of ombudsman; investigations; action in  
5 complaints; recommendations.

6 (a) The ombudsman shall have the following powers:

7 (1) He may prescribe the methods by which complaints are  
8 to be made, reviewed and acted upon: Provided, however, That  
9 he may not levy a complaint fee.

10 (2) He may determine the scope and manner of  
11 investigations to be made.

12 (3) Except as otherwise provided, he may determine the  
13 form, frequency and distribution of his conclusions,  
14 recommendations and proposals. However, the Governor or his  
15 representative may, at any time the Governor deems it  
16 necessary, request and receive information from the  
17 ombudsman.

18 (4) He may investigate, upon a complaint in writing or  
19 upon his own initiative, any action of an administrative  
20 agency.

21 (5) He may request and shall be given access to  
22 information in the possession of an administrative agency  
23 which he deems necessary for the discharge of his  
24 responsibilities.

25 (6) He may examine the records and documents of an  
26 administrative agency.

27 (7) He may enter and inspect, at any time, premises  
28 within the control of an administrative agency.

29 (8) He may order any person to appear, give testimony,  
30 or produce documentary or other evidence which the ombudsman

1       deems relevant to a matter under his inquiry, but any witness  
2       at a hearing on or before an investigation as herein  
3       provided, shall possess the same privileges reserved to such  
4       a witness in the courts or under the laws of this  
5       Commonwealth.

6           (9) The ombudsman may, where he deems necessary, refer  
7       and offer assistance to the appropriate legal agency such as  
8       for example but not limited to the Attorney General or a  
9       public defender for appropriate action in a State court.

10       (b) (1) In selecting matters for his attention, the  
11       ombudsman should address himself particularly to actions of  
12       an administrative agency which might be:

13               (i) contrary to law or regulation;

14               (ii) unreasonable, unfair, oppressive or  
15       inconsistent with any policy or judgment of an  
16       administrative agency;

17               (iii) mistaken in law or arbitrary on the  
18       ascertainment of facts;

19               (iv) unclear or inadequately explained when reasons  
20       should have been revealed; or

21               (v) inefficiently performed.

22       (2) The ombudsman may also concern himself with  
23       strengthening procedures and practices which lessen the risk  
24       that objectionable actions of the administrative agency will  
25       occur.

26       (c) (1) The ombudsman may receive a complaint from any  
27       source concerning an action of an administrative agency. He  
28       may, on his own motion or at the request of another,  
29       investigate any action of an administrative agency.

30       (2) The ombudsman may exercise his powers without regard

1 to the finality of any action of an administrative agency,  
2 however, he may require a complainant to pursue other  
3 remedies or channels of complaint open to the complainant  
4 before accepting or investigating the complaint.

5 (3) After completing his investigation of a complaint,  
6 the ombudsman shall inform the complainant, the  
7 administrative agency, and the official or employee, of the  
8 action taken.

9 (4) A letter to the ombudsman from a person in an  
10 institution under the control of an administrative agency  
11 shall be forwarded immediately and unopened to the  
12 ombudsman's office.

13 (d) (1) If, after duly considering a complaint and whatever  
14 material he deems pertinent, the ombudsman is of the opinion  
15 that the complaint is valid, he may recommend that an  
16 administrative agency should:

17 (i) consider the matter further;

18 (ii) modify or cancel its actions;

19 (iii) alter a regulation or ruling;

20 (iv) explain more fully the action in question; or

21 (v) take any other step which the ombudsman states

22 as his recommendation to the administrative agency

23 involved.

24 If the ombudsman so requests, the agency shall within the time  
25 he specifies, inform the ombudsman about the action taken on his  
26 recommendation or the reasons for not complying with it.

27 (2) If the ombudsman has reason to believe that any  
28 public official or employee has acted in a manner warranting  
29 criminal or disciplinary proceedings, he may refer the matter  
30 to the appropriate authorities.

1           (3) If the ombudsman believes that an action upon which  
2       a valid complaint is founded has been dictated by a statute,  
3       and that the statute produces results or effects which are  
4       unfair or otherwise objectionable, the ombudsman shall bring  
5       to the attention of the Governor and the Legislature his view  
6       concerning desirable statutory changes.

7 Section 4. Publication of recommendations and reports.

8       (a) The ombudsman may publish his conclusions and  
9       suggestions by transmitting them to the Correction Ombudsman  
10      Committee before announcing a conclusion or recommendation that  
11      expressly or impliedly criticizes an administrative agency, or  
12      any person, the ombudsman shall consult with that agency or  
13      person. When publishing an opinion adverse to an administrative  
14      agency, or any person, the ombudsman shall include in such  
15      publication any statement of reasonable length made to him by  
16      that agency or person in defense or mitigation of the action.

17      (b) In addition to whatever reports the ombudsman may make  
18      on an ad hoc basis, the ombudsman shall at the end of each year  
19      report to the committee concerning the exercise of his functions  
20      during the preceding year.

21 Section 5. Effective date.

22      This act shall take effect in 60 days.